

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN ROBERT GALLEGOS,

Plaintiff,

v.

GLADDEN BRUCE, et al.,

Defendants.

No. 2:23-cv-2964 DJC CKD P

ORDER

Plaintiff, a California prisoner proceeding pro se, has filed what the court construes as a motion for reconsideration of the May 3, 2024, order dismissing plaintiff's complaint with leave to amend. A ruling may be reconsidered under either Federal Rule of Civil Procedure 59(e) or 60(b). See Sch. Dist. Number. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." Id. at 1263.

There has been no change in the law, dismissal of plaintiff's complaint with leave to amend is not unjust, clear error was not committed, and no new evidence suggests that dismissal with leave to amend is not appropriate. Accordingly, plaintiff's motion for reconsideration will be denied.

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1 Plaintiff has also filed a motion for preliminary injunctive relief. As plaintiff already
2 knows, the court cannot grant preliminary injunctive relief if there is no complaint before the
3 court for injunctive relief. ECF Nos. 11 & 16. Therefore, the motion will be denied without
4 prejudice to plaintiff resubmitting a motion for preliminary injunctive relief with an amended
5 complaint in which plaintiff presents a claim for injunctive relief.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff's motion for reconsideration (ECF No. 17) is denied.

8 2. Plaintiff is granted thirty days within which to file an amended complaint. Plaintiff
9 should refer to the court's May 3, 2024, order as to the contents of his amended complaint.
10 Failure to file an amended complaint within 30 days will result in a recommendation that his
11 action be dismissed.

12 3. Plaintiff's motion for preliminary injunctive relief (ECF No. 18) is denied without
13 prejudice as described herein.

14 Dated: September 13, 2024



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE